

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

DEMAR PARKER,

Plaintiff,

vs.

Case No: 16-cv-13036-GAD-SDD

Hon. Gershwin A. Drain

Mag. Stephanie Dawkins Davis

CITY OF DETROIT, a municipality,
et al.,

Jointly and severally,

Defendants.

SALVATORE PRESCOTT &
PORTER, PLLC

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PLAINTIFF'S MOTION TO SET ASIDE SETTLEMENT AGREEMENT

NOW COMES Plaintiff, Demar Parker, by and through his attorneys, Salvatore Prescott & Porter, PLLC, and for his Motion to Set Aside Settlement Agreement, states as follows:

1. On November 12, 2018, the parties to this suit were facing trial promptly. Plaintiff had defeated multiple motions for summary judgment.

2. In good faith, Plaintiff conferred with Defendants and attempted to resolve the matter.

3. The parties entered an agreement to resolve the case with Defendants paying Plaintiff value for releasing his claims.

4. Since that time, over 120 days have passed.

5. The parties have been in constant contact and the City Defendants have provided innumerable excuses and assurances.

6. However, by any measure, the contract has, at this point, failed.

7. Defendants have paid nothing, and Plaintiff has been denied the benefit of the bargain.

8. Plaintiff is prepared to try his case and asks that this Court re-set a trial date.

9. This Court retains jurisdiction; this case has never been terminated and it arises out of federal law. *See, e.g., Román-Oliveras v. Puerto Rico Elec. Power Auth. (PREPA)*, 797 F.3d 83, 86–87 (1st Cir. 2015) (power to enforce binding oral settlement before case dismissal); *Hensley v. Alcon Labs., Inc.*, 277 F.3d 535, 540 (4th Cir. 2002); *Dacanay v. Mendoza*, 573 F.2d 1075, 1078 (9th Cir. 1978).

10. The grounds for setting aside the contract or recognizing breach are clear: there has been no value provided to the Plaintiff. In fact, he has been prejudiced by delay of resolution of this suit.

11. The parties' positions are not equal here. Paying Plaintiff now is not a

“solution” for him. For the City, delay by any means is valuable in equal and opposite measure to the cost to Plaintiff, including lost time value of money. Plaintiff also has been under the stress of expecting and never receiving payment *for months*.

12. Moreover, Plaintiff’s counsel is not paid hourly or a salary and has had to incur the costs of repeated trips to this Court to address this matter. The parties’ positions are definitively and materially changed.

13. Just as a Court may enforce a settlement over which it retains jurisdiction, it may recognize a failure of the agreement, and it should do so here.

Relief Requested

For the foregoing reasons, and those stated within Plaintiff’s brief in support, Plaintiff respectfully urges the Court to set aside the settlement agreement entered into by the parties, and re-set a trial date in this matter.

Respectfully submitted,
SALVATORE PRESCOTT &
PORTER, PLLC

/s/ Sarah S. Prescott

Sarah S. Prescott (P70510)
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Dated: March 25, 2019

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO SET ASIDE
SETTLEMENT AGREEMENT**

Plaintiff relies on the irrefutable facts and the law set forth in the motion in support of the relief requested.

Respectfully submitted,
SALVATORE PRESCOTT &
PORTER, PLLC

/s/ Sarah S. Prescott

Sarah S. Prescott (P70510)
Attorney for Plaintiff
105 East Main Street
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Dated: March 25, 2019

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2019, I electronically filed the foregoing document with the Clerk of the Court using the ECF system which will send notification of such filing to counsel of record.

Dated: March 25, 2019

s/ Tara L. Lank

Tara L. Lank, Legal Secretary